

**Dissenting Views to Accompany
H.R. 1787, the “Good Samaritan Volunteer
Firefighter Assistance Act of 2003”**

We strongly oppose H.R. 1787, the “Good Samaritan Volunteer Firefighter Assistance Act of 2003.”

We oppose this bill for several reasons. First, while it is maintained that this legislation would encourage the donation of firefighter equipment by eliminating civil liability barriers, there have been no reported cases of businesses refusing to donate equipment nor cases of volunteer firefighting companies suing donors. Second, companies receiving the benefits of their donations should not be immune from the responsibility of problems with the equipment. Third, there are no measures in the bill that require certification of the safety of the equipment. Volunteer fire fighters should not be expected to perform their duties with equipment that may or may not be safe. Fourth, this problem could be solved without congressional action. Volunteer fire fighters could simply waive the liability of the donors for negligence resulting from donating firefighting equipment. For these and the reasons set forth herein, we cannot support this legislation.

Description of Legislation

H.R. 1787 would ensure that an individual or entity that donates fire control or fire rescue equipment to a volunteer fire company is not liable for State or Federal civil damages for personal injuries, property damage or loss, or death caused by the equipment after the donation. Such protection is waived if the donor’s act or omission constitutes gross negligence or intentional misconduct; or the donor is the manufacturer of such equipment. The Act preempts the laws of any State to the extent that the laws are inconsistent with the legislation. However, the bill will not preempt any State law that provides any additional protection from liability for the donor.

A. HR 1787 is a solution in search of a problem

The need for protection from liability is a non- issue for those donating fire fighting equipment. Indeed, there have been no reported cases of volunteer firefighting companies suing donors over defective equipment nor any record of claims paid as a result of donated equipment. In fact, during the hearing before the Judiciary Committee on this legislation when Representative Scott asked Chief Stittleburg if he was aware of any claims paid resulting from suits related to donated equipment, Chief Stittleburg replied that he was not aware of any paid claims.¹ Furthermore, there is no record that companies have refused to donate used fire equipment to volunteer companies. This legislation is trying to correct a problem that does not exist.

As Professor Andrew Popper observed in his testimony before the Committee:

¹*Legislative Hearing on H.R. 1787, “The Good Samaritan Volunteer Firefighters Assistance Act of 2003”:* Hearing before the House Comm. On the Judiciary 108th Cong. 49(2004)[hereinafter *Hearings*](testimony of Chief Philip C. Stittleburg, Chairman of the National Volunteer Fire Council).

I am hard pressed to see why a federal bill that preempts state law is needed in this field I am unaware of meaningful case law imposing liability on donors of equipment used in firefighting. I have no information regarding a shift in willingness to make donations and could not identify a single comprehensive study or professionally documented article, or other form of “evidence” to justify a federal law that would destroy the right of an injured party to pursue a tort claim.²

B. Companies should not be granted immunity for unsafe equipment.

While we applaud an efforts of charity and donations, if a company donates unsafe equipment they should be held responsible for the consequences. Certain equipment, like protective gear and breathing apparatuses, can deteriorate with use over time and may not be suitable for reuse. And the testing of equipment fire fighters done on a periodic basis is not enough to ensure the safety of the tools.³ Even county and city fire departments (paid firefighters) do not donate their used equipment due to safety concerns. According the Sherman George, Commissioner of the St. Louis Fire Department, “If we’re to give away used equipment that we say that’s not proper for our firefighters and something should happen to a firefighter that we give it to, then people might want to hold the city of St. Louis liable for that equipment failure.”⁴ If paid firefighters believe that they should be held responsible for problems with donated equipment, then corporations should also absorb the responsibility.

C. H.R. contains no safeguards to ensure the safety of the donated equipment.

H.R. 1787 requires no inspection or certification procedures before the equipment is donated. Before immunity is allowed, adequate safeguards must be in place to protect both firefighters and citizens. This is the only way to ensure that firefighters are using the safest equipment. In fact, ten states already have additional safety protections for firefighters, not found in this legislation.⁵ If firefighters work to protect and keep citizens safe, certainly they should have protective equipment that has been inspected and certified.

D. This Matter could be resolved without congressional action

The issue highlighted by H.R. 1787 may be dealt with without congressional action. Volunteer fire companies could simply sign a contract waiving the liability of the donors for negligence resulting from donated firefighting equipment. This tactic would ensure that the fire companies are informed and have consented to the immunity of the donor. Even Chief

²Hearing, supra note 1, (written testimony of Andrew Popper, Professor of Law, American University, Washington College of Law) at 5.

³Hearing, supra note 1, at 15 (testimony of Chief Stittleburg).

⁴NPR: All Things Considered (July 11, 2001).

⁵The states are as follows: Alabama, California, Indiana, Kansas, Missouri, New York South Carolina, Tennessee, Texas, and West Virginia.

Stittleberg stated, in a response to a question at the hearing, that, “ In my view, sir, it can be effective.”⁶ If the waiver is an effective method, then that should be the manner to grant immunity and not this one-way exemption. Informed consent is a more prudent approach than blanket immunity.

Indeed, Rep. Scott proposed such a solution when he offered a common sense amendment that would specify that immunity would apply to the extent the volunteer firefighter company agreed itself to waive liability claims stemming from donated equipment. Yet this amendment was rejected by the Majority. Another alternative for dealing with this issue would be by enhancing federal grants for permit the acquisition of the needed equipment. Unfortunately, the rules of germaneness did not permit us to pursue this approach.

Conclusion

Taking away a harmed individual’s right to his or her day in court is a serious matter. Before this Committee takes such drastic action, and goes so far as to preempt state laws, there should be some evidence that a problem of frivolous litigation actually exists. Here we have not even been presented with a single lawsuit that has justified this legislation. In this context, we cannot support the approach of denying compensation to harmed and innocent victims.

John Conyers, Jr.
Howard L. Berman
Jerrold Nadler
Robert C. Scott
Sheila Jackson Lee
Maxine Waters
Robert Wexler
Tammy Baldwin
Linda T. Sanchez

⁶Hearing, *supra* note 1, at 48 (testimony of Chief Stittleburg).